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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Chimyere McCall and Monroe McCall,  
Plaintiffs,  
v.  
Damon Charles Williams and Zene  
Williams, husband and wife; et al.,  
Defendants.

No. CV-19-05126-PHX-SMB

## ORDER

Pending before the Court is Plaintiffs' Motion for Attorneys' Fees and Costs. (Doc. 70.) Defendants filed a Response, (Doc. 75), and Plaintiffs filed a Reply, (Doc. 76), as well as a Request for Ruling, (Doc. 77). Having considered the parties' briefing and relevant law, the Court will grant Plaintiffs' request for fees and costs.

## I. BACKGROUND

Plaintiffs initiated this action in March 2019 after learning that Defendant Damon Williams recorded a judgment lien against them a year earlier. (Doc. 1 at 1–2.). The procedural background has been explained in a previous order of the Court, (Doc. 61), and will not be repeated in full here but is incorporated for purposes of this ruling. Notably, the Court has (1) granted Plaintiffs’ Motion to Dismiss Counterclaim, (Doc. 61); (2) granted, in part, Plaintiffs’ Motion for Partial Summary Judgment, (Doc. 64); and (3) granted Plaintiffs’ Motion to Dismiss Their Remaining Claims, (Doc. 68). With all substantive matters fully adjudicated, Plaintiffs timely submitted their request for attorney’s fees, seeking \$22,450.00 in attorney’s fees and \$351.66 in costs. (Doc. 70.)

1           **II. DISCUSSION**

2           To prevail on a motion for attorney's fees, the movant must be legally eligible for  
 3 and entitled to the fees, and the fees must be reasonable. *See LRCiv. 54.2(c).*

4           **A. Eligibility and Entitlement**

5           Plaintiffs' claim for attorney's fees is based on three statutory provisions: (1) A.R.S.  
 6 § 33-420(A), for obtaining wrongful lien damages; (2) A.R.S. § 33-420(B), for obtaining  
 7 declaratory judgement that the liens were invalid; and (3) A.R.S. § 12-341.01, for obtaining  
 8 dismissal of Defendants' counterclaims. (Doc. 76.)

9           Regarding Plaintiffs' wrongful lien claims, Arizona law permits real property  
 10 owners to seek damages and declaratory judgement when a lien is groundlessly placed on  
 11 their real property. *See A.R.S. § 33-420.* If the property owner prevails in the action to  
 12 recover damages, the individual who groundlessly filed the lien "is liable to the owner or  
 13 beneficial title holder of the real property for . . . reasonable attorney fees and costs of the  
 14 action." A.R.S. § 33-420(A). Likewise, if the property owner seeks "relief as is required  
 15 to immediately clear title to the real property," such as declaratory judgment, then "the  
 16 owner or beneficial title holder may recover reasonable attorney fees and costs of the action  
 17 if he prevails." A.R.S. § 33-420(B).

18           This Court has already ruled in Plaintiffs' favor on their section 33-420(A) wrongful  
 19 lien damages claim and their section 33-420(B) wrongful lien declaratory judgment claim.  
 20 (Doc. 64 at 7–8). Thus, the Court finds that Plaintiffs are eligible and entitled to attorney's  
 21 fees and costs on these claims under A.R.S. § 33-420(A)–(B).

22           Regarding Plaintiffs' defense against Defendants' counterclaims, Arizona law  
 23 provides that "[i]n any contested action arising out of a contract, express or implied, the  
 24 court may award the successful party reasonable attorney fees." A.R.S. § 12-341.01(A).  
 25 "The legislature used the phrase 'may award' in authorizing the trial judge to award a  
 26 successful contract litigant reasonable attorney's fee." *Associated Indem. Corp. v. Warner,*  
 27 143 Ariz. 567, 570 (1985). Arizona Courts have long held that

28           A court has broad discretion whether to award attorney fees and may consider

1 factors including (1) “[t]he merits of the claim or defense presented by the  
 2 unsuccessful party”; (2) whether “[t]he litigation could have been avoided or  
 3 settled and the successful party's efforts were completely superfluous in  
 4 achieving the result”; (3) whether the unsuccessful party would suffer  
 5 “extreme hardship”; (4) whether the successful party prevailed as to all relief  
 6 sought; (5) whether novel legal questions were presented; and (6) whether  
 7 the award would discourage parties from litigating or defending legitimate  
 8 contract issues.

9  
 10 *Goodman v. 12 Univ. LLC*, No. 2 CA-CV 2020-0034, 2020 WL 6878883, at \*8 (Ariz. Ct.  
 11 App. Nov. 23, 2020) (quoting *Assoc. Indem. Corp. v. Warner*, 143 Ariz. 567, 570 (1985)).

12 The court makes the following findings as to each of the above listed factors:

- 13 1. Plaintiffs had a meritorious defense against Defendants' contractual counterclaims  
 14 and ultimately succeeded on their motion for summary judgment. This factor  
 15 weighs in Plaintiffs' favor.
- 16 2. No information was provided about specific settlement efforts in this case, but—  
 17 given the fact Defendants were still knowingly filing invalid liens after litigation  
 18 had commenced, (*see* Doc. 76 at 5)—settlement was unlikely. This factor weighs in  
 19 Plaintiffs' favor.
- 20 3. There was no evidence presented on this issue. However, because "the party  
 21 asserting financial hardship has the burden of coming forward with *prima facie*  
 22 evidence of the financial hardship," *Woerth v. City of Flagstaff*, 167 Ariz. 412, 20  
 23 (Ct. App. 1990), and Defendant has not done so, the Court finds that this factor  
 24 weighs in favor of Plaintiffs' request for fees. *See Ogden v. CDI Corp.*, No. CV08-  
 25 02180-PHX-DGC, 2013 WL 1149913, at \*3 (D. Ariz. Mar. 20, 2013) (explaining  
 26 that a party does not demonstrate hardship where they "fail to present evidence").  
 27 This factor weighs in Plaintiffs' favor.
- 28 4. Plaintiff prevailed against the counterclaims and is the successful party. This factor  
 29 weighs in Plaintiffs' favor.
- 30 5. There is nothing novel about the claim or defense in this case. This factor weighs  
 31 in Plaintiffs' favor.

1       6. Plaintiffs are requesting an award of \$22,450.00. Such a fee award would not deter  
 2 legitimate claims from being filed but might deter these Defendants from filing  
 3 additional baseless judgement liens. This factor weighs in Plaintiffs' favor.

4       Therefore, because all of the factors support an award of attorney's fees in favor or  
 5 Plaintiffs, the Court finds that Plaintiffs are eligible and entitled to attorney's fees under  
 6 A.R.S. § 12 341.01 for their defense against Defendants' counterclaims.

7              **B. Reasonableness**

8       A district court must calculate awards for attorney's fees using the "lodestar"  
 9 method. *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 n. 4 (9th Cir. 2001). "The  
 10 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably  
 11 expended on the litigation by a reasonable hourly rate." *Morales v. City of San Rafael*, 96  
 12 F.3d 359, 363 (9th Cir. 1996). "[T]he lodestar figure is presumptively a reasonable fee  
 13 award," *Ferland*, 244 F.3d at 1149 n. 4, but "[a] district court should exclude from the  
 14 lodestar amount hours that are not reasonably expended because they are 'excessive,  
 15 redundant, or otherwise unnecessary.'" *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d  
 16 1041, 1045 (9th Cir. 2000) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)).

17       Defendants' have failed to "identify with specificity all disputed issues of material  
 18 fact" and have not "separately identify each and every disputed time entry or expense  
 19 item," as required by Local Rule 54.2(f). Instead, Defendants broadly state—in a section  
 20 heading—that "The Court Should Reduce the Number of Hours Claims If the Fees Are to  
 21 Be Awarded," while falsely claiming that Plaintiffs have "not provided any details  
 22 regarding the number of hours claimed." (Doc. 74 at 3). However, the Plaintiffs have, in  
 23 fact, provided the Court with a detailed log for every item billed by their attorney over the  
 24 past two years, totaling 92.9 hours. (Doc. 70-2). The Court has reviewed this log along  
 25 with the declaration of Plaintiffs' attorney, (Doc. 70-1), and finds the hourly rate of \$250—  
 26 for a Phoenix area attorney with 22 years of experience—is reasonable, and the time was  
 27 likewise reasonably expended, totaling less than 100 hours over two years.

28              **III. CONCLUSION**

Accordingly,

**IT IS ORDERED GRANTING** Plaintiffs' Motion for Attorney's Fees and Costs and awarding Plaintiffs their attorney's fees in the amount of \$22,450.00 and costs in the amount of \$351.66, plus post-judgement on that amount at the rate set forth in 28 U.S.C. § 1961.

Dated this 28th day of September, 2021.

Honorable Susan M. Brnovich  
United States District Judge